review the decision below as to the existence or scope of a contract whenever one is claimed to have been impaired; but it has seldom asserted this right except when the decision below did in terms give effect to a statute. See *New Jersey* v. *Wilson*, 7 Cranch, 164; *Bridge Prop'rs* v. *Hoboken County*, 1 Wall. 46. If Mr. Justice Peckham's reasoning is sound, a broad field is opened for evasions of the constitutional provision. But the reasoning is too stilted. The court has a right to look at the whole record and at all the circumstances. It appeared that throughout the principal case the bone of contention had been the validity of the later statute, and the court could not overlook the glaring fact that the State court did give effect to that statute, although it did not say so. This view is properly a broad one, consistent with the subject with which it deals.

WAYS OF NECESSITY — WHAT ARE THEY? — It is a common impression that a way of necessity may be demanded wherever a landowner finds that he has no access to his property except over the lands of others. That this impression is mistaken is shown by the case of *Ellis* v. *Blue Mountain Ass'n*, 41 Atl. Rep. 856, decided by the Supreme Court of New Hampshire. There the plaintiff owned a farm situated in the centre of Corbin Park — a game preserve. A public highway running completely through the park was the sole means of access to the farm. The owner of the park prevailed on the town officials to exercise their statutory authority and abolish this highway; whereupon the plaintiff filed a bill to have a way of necessity laid out and to have the park owner enjoined from allowing his wild animals to trespass on the plaintiff's land. The injunction was granted, but the way was refused. The result is peculiar. The farm is carefully protected for the plaintiff's advantage, but he is unable legally to set foot on it. The court place the decision on the ground that while necessity may serve as a basis for an implied grant or reservation, yet where, as here, there can be no question of grant or reservation necessity in itself cannot entitle to a way. In contradiction of this reasoning, the early English cases laid emphasis on the bad policy of tying up lands, and granted ways on the ground "that the public good required that the land should not be unoccupied." *Dutton* v. *Taylor*, 2 Lutw. 1487. Later this reasoning was doubted by Lord Kenyon in *Hawton* v. *Frearson*, 8 T. R. 50; and in *Bullard* v. *Harrison*, 4 Maule & S. 317, Lord Ellenborough held that, where no grant could be implied and where no prescription could be alleged, no degree of necessity could create an easement. The English law is settled in accordance with this case. In America the courts almost without exception have taken the same view. *Tracy* v. *Atherton*, 35 Vt. 52.

As a matter of principle, the accepted doctrine seems correct. It is harsh dealing to allow one person to impose such a burden upon an utter stranger for private advantage, and without compensation. It is hard to find a principle that will justly determine which of several surrounding landowners, all free from fault, must give gratis to the owner inside. The cases of grants implied from necessity can give no support to the contention against the principal case; for in these cases the way is not given because of the necessity in itself, but because the necessity has come to be considered proof that a way was intended to pass as incident to the

original grant. The fact that the need of a way may suffice to show this intention is no ground for saying it will justify the appropriation of a stranger's land.

Again the reasons of policy set forth by *Dutton* v. *Taylor* are not so urgent practically as theoretically; as a matter of fact land will rarely remain tied up any length of time for want of a way. There are several remedies. The owner may sometimes, as he would have been allowed to do in this case, enter by license of the other landowner. He may often purchase a right of way. He may petition to have a highway laid out. He may finally be rid of the whole matter by selling out to the adjoining owners. To grant such ways would radically disturb private property rights, and the hardships and injustice incident to this disturbance would seem to outweigh the benefits. It may then be said both on principle and authority that what is generally termed a way of necessity is merely a necessary incident to a grant, that pure necessity in itself cannot authorize the appropriation of another's land, that the right to a way of necessity properly so called does not exist.

DAMAGES FOR MISTAKES IN TELEGRAMS. — The accepted rule as to the damages recoverable for the breach of a contract to transmit a telegram is boldly ignored in a late case. The plaintiff gave to the defendant, a telegraph company, for transmission to his attorneys, a message which read: "Attach property for seven hundred ninety dollars;" as delivered it read: "Even hundred ninety dollars." The attorneys attached for the latter amount, and thereby the remainder of the plaintiff's claim was lost. The court assumed in their decision that the defendants are liable for the full amount of this loss. *Western U. T. Co.* v. *Beals*, 76 N. W. Rep. 903 (Neb.).

In the case of a negligent transmission of a telegram the courts have almost universally applied the general rule of *Hadley* v. *Baxendale*, 9 Exch. 341, which limits the consequential damages for a breach of contract to those within the contemplation of the parties at the time of entering into the agreement. So in every case the struggle at the trial is to show one of two things: either an actual notice, given by the sender to the operator, of the possibility of special damage, or a constructive notice given to him by the very words of the message. *Western U. T. Co.* v. *Landis*, 18 Ill. App. 57; *Squire* v. *Western U. T. Co.*, 98 Mass. 232. Upon the latter point there seem to be two lines of decisions, the first logically adhering to the rule and requiring the message to give the operator specific notice of the possibility of loss, the second holding it sufficient if the business importance of the message appears clearly. *Primrose* v. *Western U. T. Co.*, 154 U. S. 1; *Postal T. Co.* v. *Lathrop*, 131 Ill. 575. In either case the remedy is notoriously inadequate. Accordingly, some few courts, not relying upon any principle but frankly recognizing the anomaly, have refused to apply the rule of *Hadley* v. *Baxendale*, *supra*; *Western U. T. Co.* v. *Way*, 83 Ala. 542; *Western U. T. Co.* v. *Reynolds*, 77 Va. 173.

This judicial legislation, and the numerous modern remedial statutes, lead one to question whether the law of damages has been properly applied to the case of the telegram. Damages flowing from a breach of contract are of two kinds, direct and consequential. It is only in the case